

**DRAFT MEETING MINUTES**  
**SENATE BILL 325 RULEMAKING COMMITTEE**  
**Tuesday, May 17<sup>th</sup> 2016**  
**2:00pm to 4:00pm**  
**Metcalf Building**  
**1520 E. Sixth Ave, Helena, MT 59620**

**PRESENT**

*Committee Members Present:*

*Jay Bodner (phone)*

*Barbara Chillcott*

*Bud Clinch*

*Dave Galt*

*Adam Haight*

*Art Hayes, Jr. (phone)*

*Tammy Johnson (phone)*

*Brenda Lindlief-Hall (phone)*

*Peggy Trenk*

*Montana Department of Environmental Quality Staff Members Present:*

*Kirsten Bowers*

*Myla Kelly*

*Kurt Moser*

*Timmie Smart*

*Amy Steinmetz*

*Mike Suplee*

*Members of the Public Present:*

*Tanya Fish*

Ms. Amy Steinmetz called the meeting to order at 2:05 pm. She welcomed and thanked everyone for attending the meeting and summarized the agenda.

The meeting commenced with introductions, followed by a re-cap of the April 20<sup>th</sup> meeting by Ms. Steinmetz. The group discussed case by case vs. streamlined approach and there was a follow up phone call a week ago to talk about what the department had determined regarding state authority to use the streamlined approach. It was agreed that this would be talked about again later in the meeting. Ms. Steinmetz asked if everyone had a chance to look at April's meeting minutes and said if no one has issues with them they will be marked complete and published to the website.

Next, Ms. Myla Kelly recapped the last meeting and the phone meeting that the SB325 DEQ workgroup exhaustively researched and investigated the pros and cons of the case by case and streamlined approach. The group outlined the characteristics of each, which Ms. Kelly said would be discussed today. She said the department sees many hurdles that need to be jumped for the streamlined approach and a lot of uncertainty in being able to preplan many of the scenarios and provide the level of detail that DEQ thinks will be required for the approach to be approved by EPA and the Board of Environmental Review (BER). For DEQ this makes the case by case the preferred approach because of

not enough certainty or benefits in the streamlined approach. Ms. Kelly asked if anyone has any strong opposition to moving forward with the case by case approach.

Mr. Dave Galt referred to the April 20<sup>th</sup> meeting minutes where it says one of the things the streamlined approach provides is more certainty because the process is laid out. He said in his experience that when people are looking for a water permit, they want to know what the process is going into it. They are going to have to do a lot of work and it costs a lot of money, so they want to know the process. He asked how DEQ sees that certainty issue and the difference between case by case and streamlined.

Mr. Mike Suplee said he thinks a large amount of the details will be captured in the document anyway, except they'll be in guidance documents as opposed to in rule. So if we went with the streamlined approach, all of this has to be rule approvable which sets a higher bar. If it goes the case-by-case pathway, what the department expects to see would all be laid out in the guidance documents. Mr. Suplee said this was akin to what they did with the nutrient workgroup where there is a relatively simple rule with a lot of the gory details in guidance. Everyone knows that DEQ is obliged to what's in rule. He did acknowledge that, in theory, we don't have to follow our guidance. However, we usually do, especially if it's been developed in house like this.

Mr. Galt thought that most of the gory details in the nutrient package are in the circular. Mr. Suplee said some of it's in the circular, but if you get into how you carry out substantial, widespread cost analysis under special circumstances, a lot of that direction is in a hefty guidance document that is associated with those two other circulars. It's a little bit of a mix.

Mr. Galt said that in the nutrient process there was a lot of concern by the industry side when it came time to do an economic analysis—you could develop a process for the cities, but for industry, it was difficult and there is not a high degree of success nationally. So DEQ came in and essentially wrote the economic analysis which he understood was the economic analysis you had to go through for a general variance for industry. Mr. Galt didn't see the same degree of direction being laid out here. He said he didn't think the industry guys would have to go through an economic analysis for general variance on the nutrient criteria, because DEQ did it. Mr. Suplee agreed. Mr. Galt asked if it was an option to have DEQ to do it again for variances under SB325. He said that's what the rub's going to be: the cities get it done easily—there is a standard process that everyone accepts and the data is all there, but not for industry.

Mr. Suplee responded that it keeps coming back to the idea that in the case of nutrients, we expected that those criteria would essentially affect every municipal permittee discharge in the state, plus a handful of industry folks. But this is a case where just a few people are going to be affected because the situations it applies to seem to be very limited. That is the big distinction. We keep coming back to where we believe there aren't going to be that many cases where Part 2 applies.

Mr. Galt asked if prior to the passage of SB325, if a discharger had an issue with "purer than natural" on some parameters, could they have gotten an individual variance on that without the passage of SB325? Mr. Suplee said that he didn't know the answer to that, but he knows that DEQ had laws on the books that pointed in that direction. "It's not necessary to treat to purer than natural" was already in place for some years. Whether or not that was applied, he was not sure. He said he will look into whether it was ever applied and under what mechanisms.

Mr. Galt said he was a little hesitant to just agree to the case by case. Mr. Suplee asked if it would be helpful at the next meeting to have a rule and a guidance document that talked to a fair degree about

what's expected. Mr. Galt thought that would be helpful. Ms. Tammy Johnson said that we do need predictability and certainty and to understand what we're looking at when we're going in. She did think it would be helpful to have the guidance document fleshed out a little bit before they made an ultimate decision. She understands DEQ's problems with the streamlined approach but it's very difficult to tell their members that we're developing a process they might be surprised by. Mr. Galt agreed and said that they're not trying to be difficult but that they just don't understand what's at stake.

Mr. Galt added that he realizes that they (the workgroup members) are representatives and not the people who deal with the permits, but whatever they can have in advance to send to the people who do deal with the permits would be helpful.

Ms. Barbara Chillcott added that one thing that came up at the last meeting was even with the streamlined approach there is still potential for surprises. It was discussed how it's hard to think ahead and figure out the issues down the road and what a variance will look like or what the parameters are. Ms. Chillcott said there are concerns that DEQ and the workgroup might invest a lot of time in the process and then the first variance that comes in will be something that no one thought of. She was not sure there was a way to capture this when doing the comparisons.

Mr. Suplee said it's equally problematic for both and that they will run into the same thing with Part 1. He said it's very difficult when your parameters are different to build a global process with enough detail. With nutrients it was easier because they knew what they were doing, how to treat it and what it does to the environment. Nutrients were technically difficult to focus, but with this one it could go in four or five directions depending on the pollutant, and that creates certain difficulties. This is where the guidance may have a little more wiggle room.

Ms. Peggy Trenk said that we are a litigious society these days and asked what process best protects the permit applicant on the legal side. She asked for the most solid case to take forward. Is it one where you have DEQ and EPA work on it and you have all the information, where some could suggest using too much discretion?

Mr. Suplee thinks the case by case because each one is evaluated as you go through and once you've got it, you're done. The downside of the streamlined approach is that we may have a process down and 2 or 3 go through it and with the 4<sup>th</sup> one there is a challenge. That challenge can go all the way back to the process that built it. This potentially can have an effect on the three that have already gone through the process. That is also a potential risk we face with the general variance for nutrients. We are issuing nutrients variances as we go. If that process were to suddenly collapse it would be a problem.

Ms. Kelly agreed and said this point of uncertainty with the streamlined approach was brought up in the last meeting and how it could be impossible to identify each scenario in the future that was not outlined in the process. It could be subject to a challenge and there is a risk that the entire process could be challenged.

Mr. Bud Clinch said the concern about a decision affecting other previously issued permits probably holds true on the case by case scenario. He said if it's found that you use some process that's found deficient and you used the same process on another case by case permit a year before, that other permit could become invalid as well. He said it may open the door for the opponent to challenge the previous permit based on a recent court decision.

Mr. Suplee said to remember there hasn't been the BER approval aspect, that the individual board approval that will occur on the case by cases is included in that element and not in the other (streamlined). Presumably, that chance that the board has to review that individual case will shore it up more than if they just had to review the process up front but not the individual variance.

Ms. Kristen Bowers agreed and said one advantage of the case by case is that they would be subject to their own separate rulemaking process, separate board approval, and separate EPA approval as a water quality standard. If one is successfully challenged it could make other cases vulnerable, but they would have to be separately challenged. Mr. Clinch said but when one is successfully challenged then that becomes an issue that can be raised on a previous rule. Ms. Bowers said it would set precedent and agreed it would make other rules vulnerable. She added that DEQ would make these as bulletproof as possible but it's hard to foresee challenges.

Ms. Trenk agreed with Mr. Galt that they have to try to get input from their people and that they were struggling with what that feedback might be. She told Mr. Suplee that it may be helpful to show an example of what they'd be looking at in the case by case criteria. Then they could decide if that was a roadmap they could follow. Mr. Suplee said this was DEQ's homework for the next meeting or before, to work on the draft rule and flesh out the skeleton guidance document and send them to the workgroup and see what everyone thinks. Mr. Galt thought this would be enough to bring back to their groups to get the support needed for the case by case. He would hate to get to the end of the process and say that they can't support DEQ.

Ms. Kelly said this sounded reasonable and that DEQ will develop a rule and draft guidance based on this case by case path. If at that point it seems reasonable, we will continue down that path. She said if there is any kind of red flag DEQ will stop and reevaluate. Ms. Kelly asked if there were any other questions. There were no questions so the meeting moved on to the next item agenda of Part 1.

Ms. Steinmetz said Part 1 was briefly discussed in January and the focus was on the difference between the natural definition that we have in Montana rule and statute vs. non-anthropogenic. She said DEQ would talk about part 1 of the statute in more detail today and would discuss some approaches they might take moving forward. Mr. Suplee will also talk about items DEQ sees as needs in the rule.

Ms. Steinmetz continued by explaining how the statute only has 3 sentences, but there is a lot of work to implement them. The main three points are:

1. The department may not apply a standard to a water body if the water quality is more stringent than the non-anthropogenic condition.
2. If the non-anthropogenic condition is higher than the standard, then the non-anthropogenic condition becomes the standard.
3. The water quality standards for downstream waters have to be attained and maintained. This part will be addressed at a later date. Ms. Steinmetz said that DEQ has some precedent for language from the nutrient rule package that's gone through EPA headquarters. So DEQ is comfortable that we can work this piece into rule without a problem. There will still be a lot of work to implement it though.

Ms. Steinmetz focused on the first two sentences. She explained that water quality standards have to be adopted in rule, which is stated in MCA 75-5-301 where it states that "the board shall....formulate and adopt standards of water quality." So in Montana statute we are directed that the board will formulate and adopt water quality standards. There is also precedence on a national level. She said Ms. Fish had

mentioned the Northwest Environmental Advocates vs. U.S. EPA Oregon case. This says a state can't use a narrative statement to replace a numeric water quality criterion. At face value, the statute looks like we could just figure out what the non-anthropogenic condition is and that's your water quality standard. But under state law and this lawsuit, we can't do that. However there may be easier approaches to take instead of the typical water quality standard process. Ms. Steinmetz referred to the Federal Register and told the people on the phone that she would send the link. She referred to the "Alaska rule" which is in the Federal Register from April 2000.

The Alaska rules says that state and tribal water quality standards adopted after the date of the rule (April 27, 2000) aren't effective until approved by EPA. The rule was promulgated in response to an opinion issued in district court in the Alaska Clean Water Act Alliance v Clark. In response to the draft rule, the public was concerned about the length of time that EPA's approval/disapproval process might take. Therefore, in the final rule, EPA made some recommendations to states and tribes that helped address the concerns. Two of those recommendations are streamlined approaches to developing water quality criteria.

Ms. Steinmetz explained that this mentions 2 different approaches to developing site-specific criteria and helping to streamline the process. She said the main point in doing this is to expedite EPA's approval of water quality standards. She said they focus on the performance-based approach the most.

#### Performance-based approach

- Establishes a structure or decision-making framework that is binding, clear, predictable, and transparent. (Ms. Steinmetz said this is still ambiguous but that the most important words were binding, clear, predictable and transparent.)
- Sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes
- Relies on the State specifying implementation procedures such as methodologies, minimum data requirements, and decision thresholds in its water quality standards (Ms. Steinmetz added that it's not just a calculation or data requirement, but the whole thing from data requirements to how we implement it, to how we decide if the water body is impaired. It's very clear and laid out at the beginning.)
- Well-suited to the derivation of site-specific numeric criteria and for interpreting narrative criteria into quantifiable measures (Ms. Steinmetz said that the type of situation we're addressing in the statute gets at both of those. The statute says that the non-anthropogenic condition becomes the standard, which is the narrative criterion, and in order to implement it the state will develop site-specific criteria. So the performance-based approach is ideal for this situation.)
- Must include a public participation step to provide all stakeholders and the public an opportunity to review the data and calculations supporting the site-specific application of the implementation procedures
- After approach was approved by EPA, individual criteria derived from the approach would not need EPA approval, although they would need to be submitted for inclusion in the CWA WQS docket

Ms. Steinmetz said this is how it's streamlined; you know exactly what data is needed upfront, and you know the calculation that needs to be carried out. We also need the decision framework and implementations. We need everything upfront to expedite the whole process.

Ms. Steinmetz said that also in the Federal Register on page 24648 the general performance-based approach is mentioned.

#### General performance-based approach

- More general than performance-based approach
- Would still help guide EPA review of specific outcomes
- Because of the lower level of specificity, individual criteria derived from the process would still require EPA approval. However, the review time should be reduced because of the approach outlined in advance.

Ms. Steinmetz said the Federal Register does not talk about the state approval process, which should not be ignored. With the general performance-based approach, DEQ would still be required to go to the board with every number. Regarding the performance-based approach, DEQ is still discussing whether the board would have the authority to just approve the process without having to adopt each criterion derived from it. DEQ is not sure and needs to discuss if every single number would have to go to the board. Either way it would still streamline the process by laying out the requirements in advance..

Ms. Steinmetz asked if there were any questions. Mr. Adam Haight asked if the site-specific number didn't have to go before the board, what the public participation process would look like. Ms. Steinmetz thought it would be similar where DEQ publishes notices in newspapers and sends letters to the interested parties. Ms. Fish said a public hearing would be required. She said all the normal public participation requirements associated with any water quality standards rulemaking would be required for either process, it's just a matter of whether you're doing all of that upfront and EPA's taking approval action on the process itself. She said in the performance-based approach it's so detailed that number is predictable, so it would be redundant for EPA to review it again. She said to think of an algorithm or an equation where EPA has approved the equation that's going to be used, therefore it wouldn't make sense to approve every number coming out of it. In the general-performance based approach it's not that detailed. The process could lay out what kind of data the state's going to request, and more procedural stuff like how they're going to make decisions. But it just isn't specific enough where it's predictable what exact number will come out at the end, so EPA's approval is required at the end of the process instead of the beginning.

Ms. Chillcot asked if these were the only ways to develop a streamlined, site specific criterion, or if there were other options. Ms. Fish said the other option would be to do each scenario individually. The state wouldn't have to do any of this upfront work. If somebody thinks the criteria isn't appropriate they can approach the state to develop their own site-specific criteria for this water body and this can proceed on a separate track. It still has to meet all the requirements of a water quality standard and be submitted and approved by EPA. It's a matter of how much you want to think through the process upfront.

Mr. Galt said this goes back to what was previously discussed. Ms. Steinmetz agreed and said the big difference between the two is that DEQ has seen numerous instances over the years that a process for non-anthropogenic would have been helpful, that DEQ always runs into roadblocks because they have their natural definition which didn't match with EPA's definition. DEQ has not been able to develop site specific criteria based on natural, except in very limited circumstances, like nutrients. But DEQ sees widespread application for the non-anthropogenic, site specific criteria.

Ms. Trenk asked about the work DEQ did on Otter Creek and if they used a whole different approach. Ms. Steinmetz referred to Ms. Fish's mention of the individual site-specific criterion. She stated that the

Otter Creek site-specific EC (electrical conductivity) and SAR (sodium adsorption ratio) criteria are examples of the individual approach. She stated that the process for Otter Creek had been really onerous but that DEQ will be able to use what they've done on the development of these criteria to date and move forward to at least get to the general performance based approach for EC and SAR. She stated that because parameters are so different and uses of water bodies can be so different, DEQ sees the need for having very specific approaches for different parameters. For example, iron and EC and SAR would be very different. Iron would be more sensitive for the aquatic life use, while EC and SAR would be more sensitive for agriculture. They would have to have different approaches for determining how to set that number based on the non-anthropogenic condition.

Ms. Fish said that from EPA's perspective, site-specific criteria can vary in size. You could be talking about one water on a particular segment of a stream or it could mean that you're dealing with an issue regionally. For example, the EC/SAR criteria in the TPR (Tongue and Powder River) waters was a site-specific criteria. It wasn't statewide but dealing with a specific region of the state. The nutrient criteria that applied to Wadeable streams are technically site specific but don't apply to all water bodies across the state. There is a difference in terms of scale, too, and what the geographic scope is that you're dealing with when you define something as a site-specific criteria.

Ms. Chillcott said if DEQ put together a rule with this performance based approach and it was approved by EPA, would the department then start doing rulemaking or start developing site-specific criteria. She asked if there is a queue lined up, or would you wait for a permit to come in? Ms. Steinmetz said it depends, that knowing we're going to need this specific approach and that the parameters are so different, DEQ knew that they needed to narrow the scope just to get started. There are about 300 different parameters in DEQ 7 and DEQ needs to narrow it down to something manageable. DEQ talked to Dean Yashan and Darrin Kron, supervisors of the TMDL and Monitoring and Assessment programs, and asked them what parameters they have the biggest issues with when determining the difference between anthropogenic and non-anthropogenic sources. Their responses were:

- Iron
- EC and SAR
- Arsenic (outside of the Yellowstone and Missouri systems which are being addressed separately by Melissa Schaar)
- Aluminum
- Radiation – alpha and beta particles

Ms. Steinmetz said she was certain if DEQ comes up with a performance-based approach for iron, or even a general approach, that we would very quickly begin developing site specific criteria for assessments and TMDLs. DEQ would probably use the approach to develop site-specific iron criteria for permitting on a case-by-case basis as the need arises.

Mr. Suplee said that sounded appropriate. Ms. Steinmetz asked if he had anything to add from the permitting perspective. Mr. Suplee said sometimes the permitting program can address parameters non-anthropogenically elevated above existing criteria themselves in the permit-writing process, or there may be a TMDL which has a load limit in it reflective of a natural condition. If neither of those options are available, the performance-based approach could be used to get a more appropriate number in place if the concentration of a parameter was elevated naturally.

Ms. Steinmetz asked the workgroup what were some of the parameters that they observe causing issues when it comes to a standard being more stringent than the non-anthropogenic condition. Arsenic was

the biggest response, followed by EC and SAR. Ms. Steinmetz asked if they were primarily seeing arsenic as a problem with the Yellowstone and the Missouri. Mr. Galt said yes, and said you wouldn't have to do every stream as long as the stream doesn't have a discharge permit. He asked if that was the issue. Ms. Steinmetz said yes, unless there is an issue with assessment as well, but she was mainly curious about the workgroup's perspective. Mr. Galt asked if selenium was an issue too. Ms. Trenk said they could add this to the information that they workgroup would ask their constituents about.

Ms. Steinmetz asked if there were any questions. There were none.

Mr. Suplee gave some detail of what the necessary components of Part 1 of the rule will be. DEQ is confident that the details in either rule or guidance, however it ends up fleshing out, will be really specific for each type of parameter. So what you would ultimately do and think about to develop a final new, natural based arsenic criterion will be a lot different than what you might do for iron, and definitely what you would do for EC. That's clear up front. But there are some overriding things that would go in the rule to make a demonstration that whatever the concentration we're concerned about is natural. This could occur by different processes, any of which could be in this rule. Mr. Suplee broke the details into 4 different pieces.

- 1.) They could include site-specific or basin-specific modeling. It could also mean comparison to reference site data from a region. So there are different things that could be done to determine anthropogenic vs non-anthropogenic contributions of a pollutant.
- 2.) There will also be data needs associated with this: data density on the ground and how many samples are needed and over what period of time.
- 3.) Another piece would be how to choose the number once you have all this information. DEQ figured out that in determining the number, regardless of what the background natural concentrations are, DEQ will have to consider the beneficial uses of the water body and the parameter's effects on the beneficial use at the same time. This was done with the nutrient standard. They would look at what nutrients do and what does the natural background look like and what use are we concerned with? If you're dealing with EC and SAR, the most sensitive uses are agriculture and soils. So the selection of that number is going to have to consider this. There are ways to link these things together in the thinking process in order to come up with the optimal number.
- 4.) A little bit trickier and new ground for DEQ is the consideration of the nondegradation policies. Up to now, nondegradation makes an assumption that any water quality standard out there in the world is set at some concentration that is usually higher than what the natural background would be. That's not really said anywhere, but it's how the rules are established. Nondegradation allows you to incrementally move toward that water quality standard in little steps, up to a point. Beyond that you have to apply for an authorization to degrade. In this case if you're actually picking a number that's based on natural then how one would apply nondegradation is going to look a lot different than what we have on the books. So the nondegradation laws will have to be modified or added to in order to accommodate this new type of standard. In some ways the new standard and the nondegradation condition may be very similar. DEQ has some ideas on how to tackle this, but it's going to take some work.

Mr. Clinch said it seems that this may be impossible in some instances, because the space between the standard and the nondegradation thresholds might vary considerably seasonally based on flows and a variety of other things. If you have a discharger upstream and concerns about changing the standards further downstream, and a variety of contributing sources in between that may or may not be permitted. You also have all this variation with flow, season, and rainfall. It's perplexing to him how you



make all of that work at the right time. Mr. Suplee said that's where having the processes be parameter-specific regarding how to pick a number come into play, along with the uses you're trying to protect. There may be a certain time of year that's most critical. You might be able to get away with just focusing on that time of year and setting the standard for at least that period of time. Then you can get data for that time of year. DEQ was able to do this with nutrients. Not sure if it would work with every parameter and when we get into each individual case the problems will become clearer what we'll have to deal with. In some cases we're going to have the information right at our fingertips so we can take a first stab at it. But it will be for certain times of the year more than others. We may not have very good data in the winter, for example. If we have to write a year-round permit, we might have a problem with that because we don't have any information to evaluate what natural is in winter. It's not impossible but in some cases it will be a challenge. When you dive into the individual parameters the problems will be different but we'll be able to solve them better as we go because we'll know what we're dealing with. Instead of trying to build a universal process that would have surely failed, we are focusing on ones that have been consistently problematic in Montana for folks who are doing TMDLs and permitting and try to build a process specific to them. In some cases there may be no other options except to do some kind of natural monitoring scenario that was done for Otter Creek. They tried to back out what this watershed would look like if there weren't ranches and farms and coalmines and all the other things that are there.

Ms. Chillcot asked if the goal is to figure out the streamlined approach, developing the criteria that would be approved in rule, and then DEQ would start developing individual criteria for the different parameters. Ms. Steinmetz said that DEQ is not 100% clear on that. Ideally they would approve the process as a standard because the result would be so predictable that it wouldn't require another approval process. (Although it would still require the public participation process.) But DEQ is not sure yet if this will be acceptable under state law.

Mr. Suplee said if the approaches for the individual parameters can't be specific enough to develop performance-based standards, but that a pretty well-defined process could be established, DEQ can bundle the individual rulemakings to streamline the approval process. DEQ does rulemaking for water quality standards relatively often and you don't have to wait 3 or 4 years for it to be done. At the end of the year you can take however many you get and say here is the process we went through, here are the numbers for these individual streams, and we're asking for your approval on these. It doesn't have to be built to a performance based standard level. In many instances we will have enough data and information to work with.

Mr. Galt asked which one of the approaches DEQ liked, performance-based or general performance-based. Mr. Suplee said he doesn't think it's an either/or. His gut feeling is that the general performance-based approach will be much more achievable in most cases, and that DEQ is comfortable with that.

Mr. Haight said with the performance-based approach, you would have an equation that would be plugged in for the parameter of concern. He's concerned with what that equation looks like. He referred back to Otter Creek and how there was a lot of testing and trying to define what natural is. Even in that specific scenario, a lot of folks had heartburn trying to figure out if that would protect beneficial uses. He said he has some trepidation of just having a blanket equation because there are a lot of variables that can impact this.

Mr. Suplee said there may be more approaches for determining anthropogenic vs non-anthropogenic contributions of pollutants on the table than we're aware of at the moment. The two big ones that are coming forward now are leveraging the data from the reference sites, and doing some sort of basin-

wide or stream-specific modeling. Those seem to be the two big hitters so far. Mr. Haight said he thinks this approach will probably work 95% of the time, he is just worried about the situations where it may not fit.

Ms. Trenk asked for a refresher on DEQ's definition of natural vs. EPA's. Ms. Steinmetz said it comes down to the human component. The state of Montana defines naturally occurring as including conditions or materials present from runoff or percolation over which man has no control, or from developed land where all reasonable land, soil and water conservation practices have been applied. Mr. Suplee said it's the second piece that EPA doesn't view as natural. EPA's natural is more anthropogenic. Ms. Kelly said EPA's definition of natural background is: background concentrations due only to non-anthropogenic sources, i.e. non-manmade. She said for a state to set criteria that relates to natural background, the state must have a natural background condition definition that's consistent with EPA.

Ms. Steinmetz asked if there were any more questions. There were none.

The group moved to discussion about topics for the next meeting. Ms. Steinmetz summarized the action items.

- Rework the draft of Part 2 of the rule and flesh out the guidance as much as possible. DEQ hopes to get this out before the next meeting, with the understanding that everyone needs time to talk with their groups to determine whether they are comfortable with the case by case approach. If there are any issues, the workgroup will reassess.
- Ms. Steinmetz will send a link to the Federal Register for the Alaska rule.
- DEQ would like to know from the group which parameters cause concern regarding anthropogenic vs. non-anthropogenic.
- The timeline says we will have draft language for Part 1 and discuss concepts and directions in June. DEQ will try to draft a rule. Ms. Steinmetz will look at one she did previously and see if it still applies.
- Mr. Galt had asked if an individual variance or something like it was grantable before SB325, and if there were any case studies, or could that have even been done. DEQ will research this.

The next meeting is June 21<sup>st</sup> at 2pm in room 111.

The meeting adjourned at 3:11pm.

Relevant Documents:

April 20<sup>th</sup> Draft Minutes

Agenda

Alaska Rule Summary

Federal Register, pdf FR\_Vol65\_No82

MCA75-5-222